

1. Overview of Issues

Many municipalities have enacted ordinances that authorize local police agencies to enter a hotel during regular business hours and request an inspection of the guest register to obtain information as to who is in the hotel, when they checked in and their anticipated check out time, how long the guest has stayed in the hotel, manner of payment and private information given by the guest to the desk clerk regarding their home address, car license plate and drivers license information. The municipalities argue that such ordinances and warrantless searches are necessary to help stop prostitution and drugs trafficking (*Patel v City of Los Angeles*, 738 F. 3d 1058 (9th Cir CA 2013) or to ensure compliance with the length of time requirements for motel guests (*City of Strongsville v Patel*, 2005 Ohio 620 (2005)). Many hotel operators have allowed the police agencies to inspect the guests registers without objection as they did not want to be subject to arrest or citation for not complying with the police requests.

However, some managers have objected and have been convicted of failure to comply with the inspection request. They argue that the police need a warrant to search the hotel registers and further, that the ordinance are not specifically limited to time, scope and duration of the inspection allowed or an opportunity to seek judicial review of the ordinance before being subjected to arrest and conviction for refusing to comply with the police agencies request.

These issues were presented *En Banc* to the Ninth Circuit Court of Appeals in *Patel v. City of Los Angeles*, *Supra* and the Court of Appeals ruled in favor of the motel owners who had been convicted of refusing to comply with the police request for an inspection. The Court of Appeals found the local ordinance unconstitutional as a warrantless search that did not give the motel owner an opportunity to seek judicial review of the ordinance before they were convicted. Recently the United States Supreme Court has accepted a Writ of Certiorari of the Ninth Circuits ruling by the City of Los Angeles.

In this presentation, we will discuss the *Patel v City of Los Angeles* case and its possible effect on the lodging industry as well as other similar privacy issues.

2. Overview of the Right to Privacy of Hotel Guests

It has long been established that the legally registered hotel guest enjoy a right to privacy under the Fourth Amendment of the United States Constitution of what they do and their bags and contents therein in their guest rooms from unwarranted searches and seizures by police. See, *Stoner v California*, 376 U.S. 483, 84 S. Ct. 1330, 11 L. Ed. 2d 856 (1964). Further, a right to privacy under the Fourth Amendment and thus unwarranted searched and seizures of credit card charges and telephone calls made from their hotel room. See, *People v Blair*, 25 Cal. 3d. 690,

602 P. 2d 738 (1979).

In analyzing the searches and seizures from hotel rooms, the court recognized that while a guest is legally registered in a room, the hotel room was a temporary residence and thus, just like their primary residence, the guest is entitled to the same protections under the Fourth Amendment to their guest rooms in a hotel as they would for their primary residence. If the rental period ended, then the innkeeper could consent to a search of a guest room and if evidence against the former guest is found within the plain view of the officers, the evidence may be admissible. See, *Sundum v State of Alaska*, 612 P. 2d 1018 (1980); *People v Lerhinan*, 58 N.Y. 2d 786, 90 A. D. 2d 74 (1982); and, *US v Jackson*, 585 F. 2d 653 (4th Cir 1978).

Accordingly, as long as the guest is properly registered into the hotel the innkeeper must request a warrant from any police agency for private guest information. If they do not request and obtain a warrant for the private information of the guest, and the innkeeper produces such information to a police agency, they may be subject to the lawsuit for violating the Right to Privacy of the guest.

3. The Municipal Ordinance and the Fourth Amendment

The LA City Municipal Ordinance in part stated:

“The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interferences with the operation of the business.” LA Munic. Code Section 41.49(3)(a).

In the Patel case, the motel owner refused to allow for the inspection of the guest registers as such a search violated the Fourth Amendment of the United States Constitution. The motel owner was convicted of violating the Municipal ordinance and fined. He was not allowed to challenge the constitutionality of the ordinance before being arrested and tried for violating the section. The hotel owner appealed the conviction and the Ninth Circuit in an En Banc opinion reversed the trial court conviction. The City sought a Writ of Certiorari to the United States Supreme Court which was granted.

The Ninth Circuit reviewed the need for a search warrant for administrative inspections of business premises and records. The court first confirmed that the non-consensual search of the guest register by the police did violate the Fourth Amendment. There was no question but that the guest registers were the business records of the innkeeper and thus the innkeeper had an expectation of a right of privacy from their search and seizure. The court also confirmed that as the guest voluntarily provided their information to the innkeeper and they did not own the records, the guest did not have an expectation of privacy to the records own by the innkeeper.

But, the Court of Appeals was concerned that the ordinance did not give an innkeeper subject to it an opportunity to seek judicial review of the ordinance and the penalties for violating the ordinance and thus left the innkeeper to the “unbridled discretion” of the police. Thus, the Court of Appeals found the local ordinance facially invalid and thus a unconstitutional search and seizure in violation of the Fourth Amendment.

A similar ruling was handed down in the *City of Strongsville v Patel*, Supra. In the City of Strongsville case, the local ordinance also allowed for local police inspection of the guest register for among other reasons to determine the length of time the guest had stayed in the hotel for compliance with the length of time provision of the ordinance. The Strongville court ruled that the administrative search was unconstitutional as it did not sufficiently limit the time, place and scope of the inspection as required by the US Supreme Court in its decision of *United States v Burger*, 482 U.S. 691, 88 S. Ct. 507, 96 L. Ed. 2d 601 (1987). The Strongville court reasoned that as the ordinance requires the registers to “always be open for inspection”, the ordinance was overboard and thus did not satisfy the *Burger* test for constitutionality.

3. Discussion Points

Although the US Supreme Court will rule on whether or not the Los Angeles Municipal Ordinance is or is not an unwarranted search and seizure under the Fourth Amendment, innkeepers must still be careful in not complying with lawful requests for the inspection of guest information. The innkeeper should still request a warrant or subpoena before voluntarily producing guest information or access to a guest room while the guest is still registered into the room. But, for administrative inspections of the guest registers pursuant to a local ordinance, the innkeeper needs to seek local counsel interpretation of the local ordinance as to whether or not it meets the valid constitutional requirements as outlined in *Burger* and *Patel*. The *Patel* decision only applies to the specific local Los Angeles Ordinance and as there are many local ordinances of a similar nature, the innkeeper must confirm if the ordinance is constitutional.

As the hospitality industry is highly regulated for health and safety reasons among others, a court may find that it is subject to administrative inspections as long as the ordinance is limited in scope and time requirements.